

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
February 5, 2003

ITEM: 11

SUBJECT: Administrative Assessment of Civil Liability with Mandatory Minimum Penalties against America Plaza Owners Association for violation of effluent limits established by Order No. 2000-90, for the discharge from sub-grade parking structure groundwater dewatering from the One America Plaza facility to San Diego Bay. The Regional Board will consider comments received during the public review period and decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2003-0010) (*Vicente Rodriguez*)

PURPOSE: The Regional Board will decide whether to adopt tentative Order No. R9-2003-0010 accepting settlement of civil liability in the amount of \$21,000.

PUBLIC NOTICE: On November 25, 2002, the public was informed of the proposed settlement of liability by posting this notice on the Regional Board web site. Public notification for this item was also provided via the Regional Board Agenda Notice for the December 11, 2002 meeting. The 30-day public comment ended on December 26, 2002.

DISCUSSION: On October 17, 2002, the Executive Officer issued Complaint No. R9-2002-0204 Administrative Assessment for Civil Liability with Mandatory Minimum Penalties in the amount of \$21,000, against the America Plaza Owners Association for violation of effluent limits established by Order No. 2000-90, for the discharge from sub-grade parking structure groundwater dewatering from the One America Plaza facility to San Diego Bay.

On November 15, 2002, the America Plaza Owners Association waived its right to a hearing and paid in full payment of the assessment of civil liability proposed in the Complaint.

If the Regional Board does not adopt the tentative Order, a hearing will be rescheduled for a future Regional Board meeting.

No comments concerning the settlement of liability were received during the 30-day comment period.

February 5, 2003

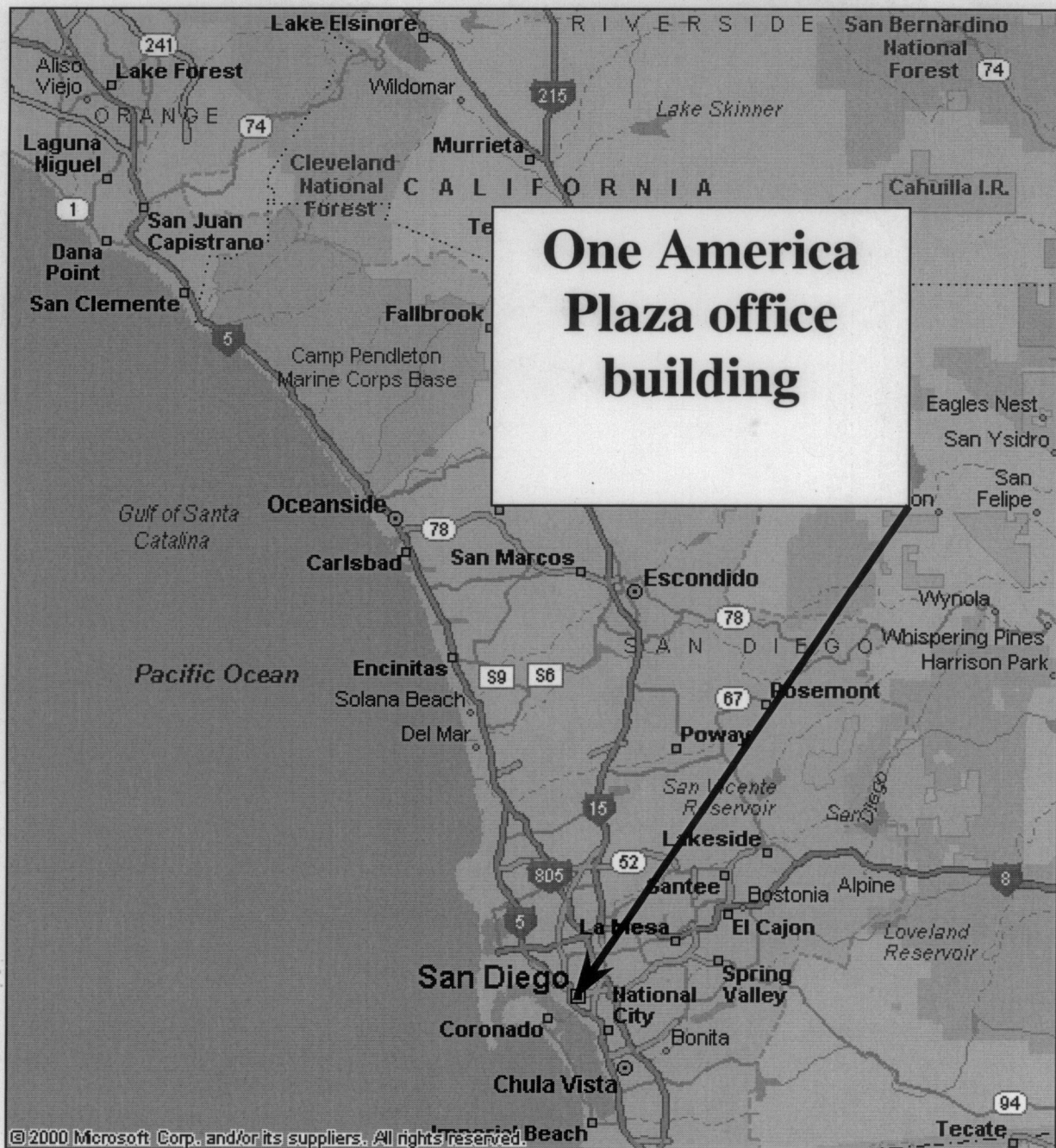
LEGAL CONCERNS: None.

**SUPPORTING
DOCUMENTS:**

- (1) Location Map of Facility
- (2) Tentative Order No. R9-2003-0010
- (3) Waiver of Hearing Form signed November 15, 2002
- (4) Complaint No. R9-2002-0204 dated October 17, 2002

RECOMMENDATION(S) Staff recommends adoption of tentative Order No. R9-2003-0010.

ITEM 11-1



One America Plaza Building
600 West Broadway, San Diego
WDID No. 9 000000469

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**TENTATIVE ORDER NO. R9-2003-0010
ASSESSMENT OF
ADMINISTRATIVE CIVIL LIABILITY
WITH MANDATORY MINIMUM PENALTIES
AGAINST
AMERICA PLAZA OWNERS ASSOCIATION
ONE AMERICA PLAZA
DISCHARGE TO SAN DIEGO BAY
FOR VIOLATIONS OF ORDER NO. 2000-90**

The San Diego Regional Water Quality Control Board (hereafter Regional Board), having held a public hearing on February 5, 2003, to hear evidence and comments on the allegations contained in Complaint No. R9-2002-0204, dated October 17, 2002, and on the recommendation for administrative assessment of Civil Liability pursuant to California Water Code section 13385 in the amount of \$21,000 finds as follows:

1. The Shimizu Development (New York) Inc., and then the America Plaza Owners Association, the responsible party for the facility One America Plaza, (previously known as Great American Plaza) were issued waste discharge requirements pursuant to Order No. 2000-90 for the discharge of extracted groundwater from the One America Plaza facility located at 600 West Broadway, San Diego, California.
2. The dewatering system at the One America Plaza high rise office building extracts groundwater from the sub-grade parking structure to prevent the structure from being inundated with groundwater. This extracted groundwater is then treated through an air stripper and discharged to San Diego Bay through a storm drain.
3. Self Monitoring Reports (SMRs) from the One America Plaza for the period from January 2000 through July 2002 indicate various violations of Order No. 2002-90. These violations are due to effluent limit exceedances of Total Suspended Solids, silver, copper, and Chronic Toxicity. Complaint No. R9-2002-0204 (Table 1) summarizes the discharge limitations set forth in Order No. 2000-90 and the violations by America Plaza Owners Association during the period in question. Based on these SMRs there are a total of seven violations (six serious and one chronic).
4. Under California Water Code section 13385 (h) and (i), the six serious and one chronic violations are subject to mandatory minimum penalties.
5. The violations are assessed \$3,000 per violation, giving a total mandatory minimum penalty of \$21,000 for the seven violations.

6. Consideration of the information available to the Regional Board prior to the hearing and described in greater detail in Complaint No. R9-2002-0204 supports assessment of civil liability pursuant to Water Code section 13385 (h) and (i) in the amount of \$21,000 as detailed in Table 1 of Complaint No. R9-2002-0204.
7. The Regional Board incurred costs totaling approximately \$9,600, which includes investigation, preparation of enforcement documents, and communication with the discharger.
8. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that pursuant to section 13385 of the California Water Code, civil liability is imposed on One America Plaza Owners in the amount of twenty one thousand dollars (\$21,000) and that the rationale for the assessment contained in Complaint No. R9-2002-0204 is hereby incorporated into this Order.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on February 5, 2003.

TENTATIVE

JOHN H. ROBERTUS
Executive Officer
February 5, 2002



California Regional Water Quality Control Board

San Diego Region

Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb9/>
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Gray Davis
Governor

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San Diego Region
Water Quality
Control Board

WAIVER OF RIGHT TO A HEARING

Ms. Marie Giere
Assistant Vice President
America Plaza Owners
Association
600 W. Broadway, Suite 1540
San Diego, CA 92101

Administrative Civil Liability
With
Mandatory Minimum Penalties
Complaint No. R9-2002-0204
\$21,000
October 17, 2002

WDID: 9 000000469

By signing below, I agree to waive my right to a hearing before the San Diego Regional Water Quality Control Board with regards to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

Marie Giere Secretary/Treasurer 11/15/02
Signature Title Date

Send this signed form to:

John H. Robertus, Executive Officer
c/o Compliance Assurance Unit
California Regional Water Quality Control Board – San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

ONE AMERICA PLAZA
Vendor # CRWQCB Notes Mandatory Minimum Penalties
Invoice # 101702 Property APDA
Total \$ 21,000.00 GL# 7185-0000
Invoice Date 10/17/02 Cash Acct 1112-0000
Post Date 11/02 Due Date 11/20/02

One America Plaza P:\App\Issues\San Diego\2002-0204\final.doc

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

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4. During the period from January 2000 through June 2002 America Plaza Owners Association violated Order No. 2000-90, *NPDES No. CAG919001, General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other*

Conveyance Systems Tributary Thereto. These violations are due to effluent limit exceedances of Total Suspended Solids, Silver, Copper, and Chronic Toxicity as reported in the Discharger Self-Monitoring Reports during this time period.

5. The following facts are the basis for the alleged violations in this matter:

America Plaza Owners Association is permitted to discharge effluent from its permanent sub-grade parking structure groundwater dewatering project to San Diego Bay under the provisions of Order No. 2000-90. Table 1 (attached) summarizes the discharge limitations set forth in Order No. 2000-90 and the violations by America Plaza Owners Association during the period in question.

6. Under California Water Code Section 13385(h) and (i), the amount of the mandatory minimum penalty that must be assessed is \$21,000, as determined by the following:

- a. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for the first serious violation and each additional serious violation in any period of six consecutive months, or, in lieu of the penalty, require the discharger to spend an equal amount for a supplemental environmental project, or to develop a pollution prevention plan.

Six serious violations are assessed \$3,000 per violation, giving a subtotal of \$18,000 for serious violations.

- b. Water Code Section 13385(i) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any six-month period:

- Exceeds a waste discharge requirement effluent limitation.
- Fails to file a report pursuant to Water Code Section 13260.
- Files an incomplete report pursuant to Water Code Section 13260.
- Exceeds a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

One chronic violation is assessed \$3,000 per violation, giving a subtotal of \$3,000 for chronic violation.

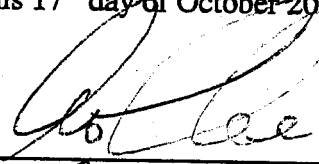
- c. The total of seven violations (six serious and one chronic) are assessed \$3,000 per violation, giving a total mandatory minimum penalty of \$21,000 for these violations.

PROPOSED CIVIL LIABILITY

7. Pursuant to Section 13385 (h) and (i) of the California Water Code, mandatory minimum penalty should be imposed on America Plaza Owners Association by the Regional Board in the amount of \$21,000, the amount of the mandatory minimum penalty, for the above violations.

Dated this 17th day of October 2002

By: _____



John H. Robertus
Executive Office

**Table 1. Violation Summary for America Plaza Owners Association – One America Plaza Dewatering
January 2000 through July 2002**

<u>Date of Violation</u>	<u>Violation</u>	<u>Permitted Limit</u>	<u>Reported Value</u>	<u>Serious/Chronic</u>	<u>Water Code Section 13385</u>	<u>Penalty</u>
1/25/00	Total Suspended Solids	50 mg/l	64 mg/l	Chronic	(i)(1)	\$0
1/25/00	Instantaneous Maximum					
1/25/00	Total Suspended Solids	30 mg/l	64 mg/l	Serious	(h)(1)	\$3,000
3/1/00	30-Day Average					
3/1/00	Total Suspended Solids	50 mg/l	57 mg/l	Chronic	(i)(1)	\$0
3/1/00	Instantaneous Maximum					
3/1/00	Total Suspended Solids	30 mg/l	57 mg/l	Serious	(h)(1)	\$3,000
4/25/00	30-Day Average					
4/25/00	Total Suspended Solids	50 mg/l	74 mg/l	Serious	(h)(1)	\$3,000
4/25/00	Instantaneous Maximum					
4/25/00	Total Suspended Solids	30 mg/l	37 mg/l	Chronic	(i)(1)	\$3,000
6/21/00	30-Day Average					
6/21/00	Silver	0.7 µg/L	1.5 µg/L	Serious	(h)(1)	\$3,000
7/31/01	6-Month Median					
7/31/01	Total Suspended Solids	50 mg/l	63 mg/l	Chronic	(i)(1)	\$3,000
7/31/01	Instantaneous Maximum					
7/31/01	Total Suspended Solids	30 mg/l	34 mg/l	Chronic	(i)(1)	\$3,000
3/26/02	30-Day Average					
3/26/02	Copper	4.8 µg/L	7.26 µg/L	Serious	(h)(1)	\$3,000
3/28/02	Instantaneous Maximum					
3/28/02	Chronic Toxicity - Echinoderm	1 TUc	4 TUc	Chronic	(i)(1)	\$0
4/23/02	Daily Maximum					
4/23/02	Chronic Toxicity – Echinoderm	1 TUc	4 TUc	Chronic	(i)(1)	\$0
6/11/02	Daily Maximum					
6/11/02	Copper	3.1 µg/L	3.72 µg/L	Serious	(h)(1)	\$3,000
6/11/02	6-month median					
Total Penalty: \$21,000						